Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of Sponsorship Identification Rules and Embedded Advertising	)))))))	MB Docket No. 08-90 FCC 08-155

COMMENTS OF SCREEN ACTORS GUILD

Pursuant to the Commission's Notice of Inquiry and Notice of Proposed Rule Making ("Notice") adopted June 13, 2008 and released June 26, 2008[1], Screen Actors Guild ("SAG" or "the Guild") hereby respectfully submits these comments regarding the Commission's sponsorship identification rules and the increasing industry reliance on embedded advertising techniques.

I. BACKGROUND

Screen Actors Guild is the nation's largest labor union representing working actors. Established in 1933, SAG has a rich history in the American labor movement, from standing up to studios to break long-term engagement contracts in the 1940s to fighting for artists' rights amid the digital revolution sweeping the entertainment industry in the 21st century. With 20 branches nationwide, SAG represents over 120,000 actors who work in film and digital television, industrials, commercials, video games, music videos and all other new media formats. The Guild exists to enhance actors' working conditions, compensation and benefits and to be a powerful, unified voice on behalf of artists' rights.

The creative community, and Screen Actors Guild in particular, has become increasingly concerned with the rising use of stealth advertising in the form of product integration on

[1] 73 FR 43194-02, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket No. 08-90; FCC 08-155, "Sponsorship Identification Rules and Embedded Advertising," July 24, 2008.

broadcast television, and the lack of disclosure and public awareness of this practice. The Guild was one of the early voices calling for increased policymaker attention to the issue of proper public disclosure of embedded advertising, expressing the importance of protecting members' rights, alerting the public, and preserving the integrity of television programming for SAG actors and the viewing public as a whole.

The House Energy & Commerce Committee's Telecommunications Subcommittee held a hearing entitled "The Digital Future of the United States; the Future of Video" on May 10, 2007. Phil Rosenthal, creator and producer of *Everybody Loves Raymond*, testified on behalf of Screen Actors Guild and the Writers Guild of America, West.[2] Mr. Rosenthal highlighted for the first time in Congressional testimony the increasing use of commercial product integration in television and movie productions.

II. INTRODUCTION

As the Commission points out in its Notice, the advent of time-shifting technologies such DVRs have enabled many consumers to bypass traditional commercial messages.[3] This technological trend, coupled with other new media avenues for advertisers to reach consumers, has given rise to a new strain of television advertising that could not have been contemplated at the time the Commission's sponsorship identification rules were enacted.

Any casual television viewer is familiar with the widespread entertainment industry practice of "product placement," whereby a commercial product (such as, for instance, a can of Coca-Cola) is placed in one or several scenes of a television show. While this practice has existed for decades in the United States in both television and movies, "product integration" is a relatively recent phenomenon, the utilization of which is growing exponentially.

"Product integration" is the practice of inserting or intertwining a product into the story line of television program for payment or other consideration—the harmless can of Coke evolves into

[2] Mr. Rosenthal's testimony is attached hereto as Attachment A.
[3] Notice at ¶ 2.

an entire episode extolling the virtues of Coca-Cola, with the Coke can playing an integral role in the plot of a particular episode. In his testimony before the House Telecommunications Subcommittee on May 10, 2007, Phil Rosenthal showed a video clip of a particularly egregious, though hardly isolated, example of unbridled product integration in an episode of the family drama "Seventh Heaven," wherein Oreo cookies played an integral role in the plot of two different episodes. As the *USA Today* recently noted, "(r)ather than exist as mere props, products are being woven more tightly into story lines as crucial plot points of subjects of dialogue, making ad messages impossible to skip."[4]

While this is an extremely troubling for the viewing public, it is untenable for the actor required to deliver the lines which extol the virtues of specific product or services. Actors are too often obligated to advertise a particular product—without consultation, consent, or payment for doing these pitches—within a television programs. Actors are routinely asked at the last minute to perform lines endorsing a product.

The Commission in its Notice references NBC's policy of bringing in advertisers during programming development.[5] This practice is not limited solely to the development and writing stage of television production—advertisers are regularly present on the sets of programs during the actual shooting phase, making last minute script revisions which are presented to unsuspecting actors as the cameras begin to roll. Viewers can be misled into believing that an actor officially endorses a particular product, despite the fact that the actor is neither consulted nor compensated. Further, this practice is often aimed at less established actors who have little latitude to stand up to producers, and it can foreclose other potential commercial endorsements.

This practice of "forced endorsements" undermines not only an actors' craft and credibility, but the creative and editorial integrity of televised programming as a whole. As Chairmen Edward J. Markey and Henry A. Waxman stated in their September 26, 2007 letter to FCC Chairman Kevin J. Martin:

> if the use of product placement and product integration places marketing objectives ahead of creative interests, the programmer risks

[4] Gary Levin, "The newest characters on TV shows: Product plugs," *USA Today*, September 20, 2006.
[5] *Id.* at ¶ 3.

> undercutting the artistic and educational value of the television show. In fact, such action risks blurring the content and advertising lines of a show completely that the end result may differ little from many of today's program-length infomercials. Such a result would be contrary to the public interest in [my/our] view.[6]

While SAG is addressing certain aspects of product integration's impact on actors through the collective bargaining process (such as proper compensation, potential conflicts, and consent), the Commission plays an important role in ensuring that consumers are informed that product integration is the result of a paid endorsement by an advertiser rather than a genuine promotion of a particular product by their favorite actor or television character.

If a broadcaster draws on the credibility of an actor or a program to promote a product to viewers, then viewers ought to be informed of this arrangement, especially since the intentional blurring of commercialism and content is often imperceptible to the viewing audience and thus inherently misleading. Indeed, the use of product placement and product integration has become so insidious and prevalent that is often undetectable even to the most discerning viewer. Sadly, the practice often manifests itself in its most egregious form in children's programming, to viewers who are the least equipped to discern the difference between scripted programming and stealth advertising.

Viewers should be made aware of this practice so they know that storylines have been created to intentionally put products and services in a positive light. As the lines between programming and advertising become increasingly blurred, SAG feels strongly that more stringent disclosure rules are critical to ensuring that precise, unambiguous safeguards for consumers are established. The American viewing public is entitled to know who is trying to persuade them as they watch a particular program, and that an underlying business transaction is the basis for the inclusion of a specific product in that program.

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[6] Joint letter to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission from Edward J. Markey, Chairman, House Subcommittee on Telecommunications and the Internet, and Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, September 26, 2007. Attached hereto as Attachment B.

III. THE COMMISSION'S EXISTING RULES

The broadcast television world has evolved tremendously since the Commission's Sponsorship Identification Rules were last updated in 1992.[7] These rules were originally designed to implement the requirements of Section 317 of the Communications Act which codifies the public's right to know when they are being sold a product.[8]

Section 317(a) of the Communications Act of 1934 requires a broadcaster to disclose any payment sponsoring a program at the time of the program's broadcast.[9] Section 317(c) provides that broadcasters must "exercise reasonable diligence" in obtaining such sponsorship information, and Section 507 establishes a reporting mechanism for its transmittal.[10] Broadcasters, when advertising commercial products or services, are merely required to make "an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product... shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast."[11] Other than requiring that this announcement remain onscreen long enough to be read or heard by an average viewer,[12] the Commission in the Notice points out that its rules merely encourage broadcasters to apply their "reasonable, good faith judgment."[13]

Viewed in the context of the current television environment, the Commission's existing sponsorship identification rules create minimal obligations for broadcasters and lack the requisite specificity to alert viewers to the subtleties of modern television advertising. As the television landscape continues to evolve, it is becoming evident that the Commission's vestigial rules from a bygone era of television are woefully inadequate to address even traditional television sponsorship arrangements in the current environment, let alone the explosion of stealth

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[7] Codification of the Commission's Political Programming Policies, 7 FCC Rcd. 1616 (1992).
[8] Amendment of Commission's "Sponsorship Identification" Rules, 52 FCC Rcd. 701, ¶2 (1975). *See also,* Applicability of Sponsorship Identification Rules, 28 Fed .Reg. 4732 (May 6, 1963).
[9] 47 U.S.C. §317(a).
[10] 47 U.S.C. §317(c) and §507.
[11] 47 C.F.R. 73.1212(f).
[12] *See Application of Sponsorship Identification Rules to Political Broadcasts, Teaser Announcements, Governmental Entities and Other Organizations*, Public Notice, 66 F.C.C. 2d 302 (1977).
[13] *See Codification of the Commission's Political Programming Policies*, Opinion and Order, 7 FCC Rcd 678, 687 (1991).

advertising currently afflicting the increasingly commercialized television programming landscape.

Indeed, as minimal as the existing sponsorship identification rules are, broadcasters routinely flout them by including the required announcements in microscopic script that scrolls too quickly for viewer comprehension. In failing to "remain on the screen long enough to be read or heard by an average viewer,"[14] this brand of "disclosure" complies neither with the letter nor the spirit of the Commission's Rules. Accordingly, television viewers simply aren't being given adequate notice of a program's true commercial sponsor, a situation exacerbated by the increasingly sophisticated use of surreptitious advertisements.

Thus, in order to fully "protect the public's right to know the identity of the sponsor when consideration has been provided in exchange for airing programming,"[15] the Commission, as set forth *infra*, must dramatically modernize and revise its sponsorship identification rules.

IV. ISSUES PRESENTED IN THE NOTICE

Over the past several years, SAG has repeatedly called upon the Commission to undertake a formal rulemaking proceeding to address the problem of rampant product integration on televised programming. Given the well documented and widely publicized proliferation of product integration, the Guild strongly believed that the added step of a Notice of Inquiry was unnecessary to ascertain the extent of this practice, and had hoped that the Commission would proceed directly to an official rulemaking. Nonetheless, SAG commends the Commission for taking this important step to shine a light on product integration and its impact on creative artists as well as consumers. Albeit bifurcated, the Commission's action signals the increasing need for stricter guidelines governing the use of stealth advertising within televised programs.

In the NOI portion of the Notice, the Commission asks commenters to identify current trends in embedded advertising. Stealth advertisement has seen considerable growth in recent years. The

[14] Notice at ¶ 5.
[15] Notice at ¶ 4.

Nielson Company reported on September 15, 2008 that "primetime product placement occurrences on broadcast network programs increased overall by almost 12% during the first and second quarters in 2008."[16] These number follow a 13% increase in product placement occurrences in prime-time broadcast network programming for 2007.[17]

The report found that, although overall product placement had decreased compared to the first half of 2007, there were nonetheless 204,919 brand occurrences on broadcast and cable television, included 21,427 instances on the top 10 broadcast programs and 85,480 instances on the top 10 cable programs, including 26,794 on "American Chopper" alone.[18] According to *Advertising Age*, advertising agencies, "paid placements in the U.S. accounted for $1.5 billion in 2005. That figure is expected to increase to $5.5 billion in 2010."[19] In response to these trends, advertising agencies are dramatically expanding resources dedicated to placing the products of their advertising clients into television programs.[20] Commercial Alert notes that spending on hidden advertisement has grown nearly tenfold between 2003 and 2007 (from $360 million to $2.9 billion); and for the first quarter of 2008, spending had increased 39%.

In light of this explosion of instances of stealth advertising, SAG urges the Commission to safeguard both creative artists and consumers by adopting a comprehensive approach to updating its sponsorship identification rules. SAG proposes a number of targeted solutions explicitly aimed toward ensuring adequate sponsorship disclosure in the modern television advertisement environment. Given the dramatic number of product placement occurrences on cable television, these guidelines should apply to programming distributed by traditional broadcasters and should also be extended to origination cablecasting by a cable operator under the auspices of Section 76.1615 of the Commission's rules.[21] However, due to the lag time between production and exhibition of feature films, the existing waiver of such disclosure requirements should remain in

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[16] Press Release, "Product Placements Decline By 15% In First Half, Nielson Reports," New York, NY, September 15, 2008.
[17] "Broadcast Product Placement on Rise, Television Week, May 5, 2008, Volume 27, Issue 14.
[18] Nielson Press Release, September 15, 2008.
[19] Study: Placement to Surge 25% in '06: Agencies revamp role as paid integration becomes a key strategy," *Advertising Age*, August 28, 2006, Volume 77; Issue 35, noting study from PQ Media.
[20] *Id.*
[21] 47 C.F.R. § 76.1615.

place for feature films containing embedded advertising when re-broadcast by a broadcast licensee or provided by a cable operator.

Specifically, the Commission's rules should be revised to require disclosure before and after a program containing integrated content. This disclosure should appear in readable text on the full screen for a significant amount of time (at least five seconds or long enough for the narrator to read the announcement aloud, whichever is longer). This requirement would not be dissimilar to the National Association of Broadcasters' existing ratings guidelines informing parents about the content of television programming. The audio component is a crucial element to drawing the viewers' attention to the presence of imbedded advertising, and should be included at a volume commensurate with the audio level of the program itself.

Additionally, each of the announcements should contain specific language explaining that the program contains imbedded content, that its inclusion is a paid advertisement, and that specific products were included in exchange for remuneration. Further, the announcement should state that inclusion of any particular product should not be considered an endorsement by the producers, writers, or actors. For the final announcement, the brand of any product specifically integrated or placed in a program should be included in the disclosure, along with the name of the parent company of the product.

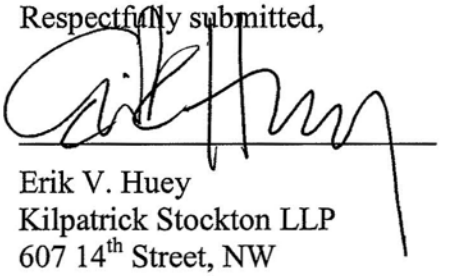
The announcement at the beginning of the program is particularly important because it alerts viewers to the presence of imbedded advertising prior to the show, so that the viewer is conscious of imbedded advertising as the show unfolds. The dual disclosure is also important from a practical standpoint, since it ensures that consumers are informed of stealth advertising even if they are away from the television either during a program's opening or closing credits. For viewers who watch the entire program, the announcements aren't duplicative since the disclosures would take different forms—the initial one would alert viewers to the presence of integrated product within the upcoming show; the latter would repeat the announcement, then identify the specific products for which the broadcaster had received compensation for inclusion.

The Commission invites commentary on a proposal raised by Commercial Alert that would require concurrent disclosures for any instance of integrated content.[22] While Screen Actors Guild acknowledges the desire of some to require such disclosure at the time of product placement or integration, the Guild fears such "real-time" disclosure may disrupt the viewing experience and distract from an actors' performance.

V. CONCLUSION

In order to address the recent explosion of stealth advertising in the form of product integration on television, the Commission should revise and strengthen its sponsorship identification rules to ensure that viewers are adequately informed of who is paying to air advertisements on broadcast and cable television.

Respectfully submitted,



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September 22, 2008

[22] Notice at ¶12.

ATTACHMENT A

Digital Future of the United States: Part V: The Future of Video

Statement of Philip Rosenthal

Creator and Executive Producer, "Everybody Loves Raymond"

On behalf of the Writers Guild of America, West and The Screen Actors Guild

Before the
Subcommittee on Telecommunications and the Internet
Of the
Committee on Energy and Commerce

May 10, 2007

Good morning, Chairman Markey, Ranking Member Upton, and Members of the Subcommittee. Thank you for the opportunity to appear before you and to comment on the important topic of the future of television in this digital age.

My name is Philip Rosenthal and I am a writer and an actor in the television industry. I created and was executive producer of the comedy *Everybody Loves Raymond* which ran on CBS from 1996 through 2005. I have worked on a variety of television series since 1989. I am here today on the behalf of the Writers Guild of America, West, the Guild that represents Hollywood's screen and television writers, and the Screen Actors Guild, which represents Hollywood's performers. I am a member of both Guilds and the Directors Guild of America, a triple threat.

The Writers Guild of America, West (WGAW) represents over 7,500 writers in the motion picture, broadcast, cable, and new media industries in both entertainment and news. The Union conducts numerous programs, seminars, and events throughout the world on issues of interest to, and on behalf of writers

Screen Actors Guild (SAG) is the nation's premier labor union representing actors. With twenty-two branches nationwide, SAG represents over 122,000 actors in films, television programs and commercials, industrials and all new media formats. SAG exists to enhance actors' working conditions, compensation and benefits and to be a powerful, united voice on behalf of actors' rights.

Today I would like to highlight three subjects that are extremely relevant to the future of video and are especially concerning to writers and actors.

<u>The Promise of New Content Distribution Technologies</u>

The first issue that I would like to highlight for the committee is the promise of the Internet and related technology. The emergence of new platforms and delivery systems for content holds great promise for the creative

community and consumers. The viewing public is no longer restrained by the television schedule to decide what and when to watch. Now they can purchase TV shows on iTunes or watch free replays on dozens of websites, allowing them to enjoy the content on their schedule.

However, these non-traditional media platforms and cutting-edge delivery systems are only as good as the creative content they feature. Whether it's shown on a television set, a computer screen or a mobile phone - it's all TV - and writers, actors and other creative talent must receive fair compensation for the content they help create.

Product Integration

The second issue I would like to discuss is product integration. We are all accustomed to seeing an actor in a movie or television show hold a beverage with its label clear for the entire world to see. This is commonly referred to as product placement. On an artistic level I'm not crazy about this, but find little to complain about as there is little difference to my product, that product being a television show or motion picture, whether you see a label or not. If a character is required by the writer, director or actor to drink a soft drink, the story flows regardless of whether the drink is a Pepsi or a Yoo-Hoo or an unmarked can.

The problem began when production entities starting making product placement deals for items that were not initially intended to be a part of a scene. Writers tried to find ways to incorporate the product after the fact, but in certain instances the actors ultimately were required to use props that made them appear awkward. As with all slippery slopes it was bothersome, but the creative community could still take solace in the fact that it was not directly endorsing a product, and that it would please those financing television show and movies.

As with all principles that are not vehemently protected the slope has begun to disintegrate from beneath our feet. The new policy foisted upon the creative community by production companies and studios is product integration. This is the practice of not only *placing* the product in the scene, but making the product *a part* of the storyline with characters required to talk about the product as well. Thanks to the somewhat specious concerns that the DVR has resulted in no one watching commercials, the studios and production companies have concluded its best just to turn the television and motion pictures themselves into commercials.

In 2006, product integration occurred more than 4000 times on network primetime television.

On NBC's *The Office*, a main character spent one episode working at a Staples store and Staples products have been integrated into another characters job. An episode of *Desperate Housewives* featured characters discussing the "cool" features of a Nissan Xterra. On *Smallville*, contact lenses helped one crime fighter with her duties, prompting another character to say, "Acuvue to the rescue." Oreo cookies were a major part of the plot in two separate episodes of the family drama *Seventh Heaven*. Here's a clip: (SHOW CLIP). A beautiful story. Maybe if the writers and actors weren't so worried about covering that engagement ring in sugar paste, they could've taken a look at the line: "Will you marry me on our wedding day?", surely a nominee for "Most Terrible Anything."

Product integration in reality programming is even more gratuitous. The poor contestants on *American Idol* must make Ford commercials every week which are then presented on the show as hip videos.' And the Judges can't say anything about it because their mouths are full of Coca-Cola.

Some of these commercial insertions could be dismissed as trivial. Others, however, are a dangerous incursion of commercial interests into a story where the writer would not place it and the viewer does not expect it. This often subtle but always insidious blurring of the line between content and commerce is an issue not just for the creative community, but for the American viewing public as well.

As writers, we believe our creative rights are affected when we are told we must incorporate a commercial product into the story lines we've written. Actors are subjected to forced endorsement when their character must extol the virtues of a product within a television program -- a practice that can seriously impact an actor's ability to get endorsement and commercial deals.

For the public, product integration exploits the emotional connection that viewers have with shows and their characters in order to sell merchandise. It also raises the serious issue of adequate disclosure.

If we are concerned about the effect commercials identified as commercials have on our children how much more insidious is this new practice? Product integration is a level of corporate pressure that impinges upon First Amendment free expression over the airwaves and the long-established protection of viewers against stealth advertising.

With few limits on broadcast advertising practices in place, the Guilds that I represent support a place for artistic discretion in product integration. We believe that writers and actors as creators of television should be consulted about potential product integrations as early as possible in the creative process and have the opportunity to refuse integrations if they believe it will harm the integrity of the program.

To protect viewers, we support disclosure that both adequately reveals product integration and is legible, and held on the screen long enough for viewers to read. A disclosure of such shows could say, "This program contains references to 'Reynolds Wrap' which is a brand of aluminum foil. The network has been paid for this inclusion. The writers and actors have not. Inclusion should not be considered an endorsement by the writers or actors." (Maybe this would end the problem.) We also support a ban on product integration in news.

But right now, individual writers and actors are nearly powerless against the companies who require them to perform these commercial services, and consumers are often unsuspectingly deceived in the process.

Independent Content/Production

The problem of product integration is exacerbated by the stranglehold that a few corporations have over the production and distribution of television programming. Due to the unparalleled vertical consolidation caused by the merger of TV broadcast networks with movie studios and cable television networks, the number of distinct voices contributing to mainstream television programming has dwindled to a handful. This means that Americans are seeing more television programming from fewer voices than ever before.

Because of the current consolidation there are not many, if any, places to go and not be pressured into incorporating product integration. Twenty years ago there were 29 dominant entertainment firms sharing 100 billion dollars in annual revenue. Today there are six conglomerates sharing 400 billion. Twenty years ago six firms controlled just a third of the employment of writers in Hollywood. Today they control 80 percent of employment. This control has lead to near elimination of the independent television production community.

Gone are the independent production companies that brought us such beloved shows as *Gunsmoke, All in the Family, M*A*S*H*, the Waltons, the Cosby Show,* and *The Wonder Years*, to name but a few.

During the 1992-1993 television season (just before the FCC's Financial/Syndication rules were repealed), only 33% of the network primetime lineup was comprised of network-produced programming. The rest was independently produced by companies not owned by the networks. By contrast, more than 75% of the current 2006-2007 network primetime lineup will be dominated by network-produced programming. And many of the independently produced content is reality programming. The total number of independent producers supplying primetime programming to the networks has shriveled from twenty-two in 1992 to two independent producers today. The remaining two, Warner Bros. and Sony Pictures TV, are affiliates of major

motion picture studios. Several companies have exploited this opportunity. The message is becoming clear, either you play ball or someone else will.

One remedy to this concentration of ownership is to enable access for independent program sources. Consequently, we propose a requirement that at least 25% of non-news and non-reality programming should come from independent sources not owned by one of the four broadcast networks

Our kids are watching. We are watching. Would we have wanted our memories of *Casablanca* to be Bogart saying to Ingrid Bergman as they say goodbye, "You're part of his life, the thing that keeps him going. Now get on that plane and enjoy United's non-stop, three-class service to Paris with seats that recline to a full 180 degrees."

Thank you for this opportunity to testify.

ATTACHMENT B

Congress of the United States
Washington, DC 20515

September 26, 2007

The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Mr. Chairman:

We are writing with respect to the increasing use of product placement and product integration in broadcast and cable television. In our view the blurring of the line between advertising and content represented by product placement and integration is unfair and deceptive if it occurs without adequate disclosures to the viewing public. In some extreme cases, it may also undermine the integrity of the television programming itself.

As you know, product placement involves the physical appearance of a product in a television show while product integration is the embedding of a commercial product or service into the very plot of a show. These growing advertising techniques use a TV viewer's emotional connection to a program and its characters to build or reinforce brand loyalty and to influence purchasing decisions.

The House Subcommittee on Telecommunications and the Internet held a hearing on May 10, 2007, which addressed, in part, the issues of product placement and product integration. At that hearing, Mr. Phil Rosenthal, the creator and executive producer of the CBS comedy "Everybody Loves Raymond," testifying on behalf of the Writers Guild of America West and the Screen Actors Guild, highlighted the growing pressure on the television industry to interweave commercial pitches into plots by showing a clip from the family drama "Seventh Heaven," wherein Oreo cookies were a major plot point in two separate episodes.

The changes in the marketplace and technology that are fueling the increased use of these advertising techniques are underscored in a December 2006 study by Nielsen Media Research. Nielsen's report indicated that in homes with digital video recorders ("DVRs"), 40 percent of broadcast television viewing occurs using the DVRs, and roughly one-half of the homes watching television in play-back skip the commercials. To mitigate against this so-called "TiVo effect" and the resulting loss of traditional advertising skipped by viewers who time-shift, the television and cable networks are integrating sponsors into the shows themselves, rather than relying solely on advertising during commercial breaks.

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The resulting rise in product placement and product integration has been dramatic in recent years. For example, Mr. Rosenthal also testified that there were more than 4,000 instances of product integration on network television in 2006. Moreover, according to PQ Media, a consulting firm that tracks product placement, this market (not including the market for product integration) is expected to grow to $2.7 billion in the United States in 2007, with television serving as the "dominant choice of brand marketers."

In addition, the video clip shown at the Subcommittee hearing reinforced the concern that if the use of product placement and product integration places marketing objectives ahead of creative interests, the programmer risks undercutting the artistic and educational value of the television show. In fact, such action risks blurring the content and advertising lines of a show so completely that the end result may differ little from many of today's program-length infomercials. Such a result would be contrary to the public interest in [my/our] view.

As the use of product placement and product integration in television programs continues to expand, broadcasters and cable operators should comply in a meaningful way with their statutory obligation to identify what entity is behind sponsored programming and what product is being pitched. The Commission's role is vital in this area because in the marketplace an advertiser will place greater value in having the viewer think that the product is part of the program, and not a paid advertisement.

Importantly, Congress has protected television viewers' right to know who is trying to influence them commercially in a programming context since the beginning of the broadcast era. For instance, Section 317 of the Communications Act of 1934 (the "Act") requires broadcast licensees to make an announcement whenever they air material for which they have received a payment or other consideration. 47 U.S.C. § 317(a)(1). The Commission extended all of these requirements to cable operators when they air programming that is within their exclusive control. 47 C.F.R. § 76.1615(c). Moreover, Section 507 of the Act also imposes disclosure obligations on those involved in producing, preparing, or supplying material intended for broadcast. 47 C.F.R. § 507. If any such person receives or provides consideration for the inclusion of program matter, the law requires disclosure up the chain of production and distribution. A broadcast licensee that receives such a disclosure must announce the sponsor even if the licensee did not receive payment. 47 U.S.C. § 317(b). As a result, any instance of product placement and product integration must be coupled with disclosures to viewers to satisfy these longstanding requirements of Federal law.

We commend you for your recent statement that you intend to conduct a proceeding on these matters and we encourage you to commence such action soon. We believe the Commission should examine the growth in product placement and product integration and how this trend affects the overall composition and nature of television programming. As part of this inquiry, the Commission should also review the criteria broadcasters and cable operators

currently use to distinguish between commercial and creative content. This proceeding should review the Commission's rules governing sponsorship disclosure. In particular, the Commission's examination should ensure that its rules sufficiently achieve the statutory requirement to inform the viewing public of the actual products being sponsored in a show as well as the entity that paid for such sponsorship. Finally, the Commission should propose and effectuate any adjustments to its rules as necessary to correct any deficiencies found during its proceeding.

Thank you for your time and attention to this matter. If you have any questions, please feel free to call us or have your staff contact Maureen Flood (Markey) at 202-226-2424 or Pat Delgado (Waxman) at 202-225-3976.

Sincerely,

Edward J. Markey
Chairman, House Subcommittee on
Telecommunications and the Internet

Henry A. Waxman
Chairman, House Committee on
Oversight and Government Reform